

64741-002



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Burton

Serial No.: 08/657,725 ✓

Filing Date: 05/03/96

For: Toy Clapper

Attorney Docket No.: 64741-002

Group No. 3301

Examiner Carlson

Paper No. 3

JUL 2 11

GROUP 3301

GP 3301

#6 / Petition 3712

Copy of Amended A

**PETITION UNDER 37 CFR 1.181**

Assistant Commissioner of Patents  
Washington, D.C. 20231

Sir:

This is a petition to withdraw notice of abandonment (Paper No. 5) issued April 29, 1998.

On November 20, 1997, the undersigned prepared and filed with the United States Patent and Trademark Office an Amendment under 37 CFR 1.111 (Paper No. 3) see attachment A.

In Paper No. 3, the information for the Certificate of Mailing was inadvertently omitted, thereby entitling the undersigned only to the date whereby the United States Patent and Trademark Office received the Amendment not the date whereby the Amendment was placed in the United States Postal Service as first class mail, postage pre-paid.

Because the undersigned was not entitled to the November 20, 1997 filing date of the Amendment, the undersigned in effect owed a one-month extension of time at the time the Amendment was in fact received by the U.S. Patent and Trademark Office, some four (4) days after the undersigned mailed the Amendment (November 24, 1997); see stamped postcard attached hereto as Exhibit B).


The undersigned was never notified that the Certificate of Mailing was not executed nor was the undersigned ever notified that a one-month extension of time was owing.

On May 1, 1998, the undersigned received Paper No. 5 (see Attachment C), which is a Notice of Abandonment indicating that the case had gone abandoned due to Applicant's failure to timely file a proper response to the Office Letter mailed August 20, 1997. The Notice of Abandonment cited that a response with the Certificate of Mailing of transmission was received on November 24, 1998, which is after the expiration of the reputed response.

The undersigned understands that it is the practice of many of the Art Units to notify the attorney of record if a portion of the response is not correct. Or at least give the attorney of record a chance to correct the omission before the case goes abandoned.

The undersigned respectfully petitions the withdrawal of notice of abandonment in this case and requests that this case be passed to issue.

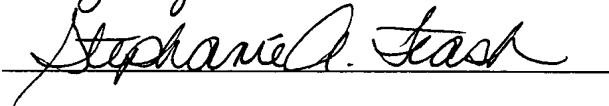
Respectfully submitted,

  
Joseph V. Coppola, Sr.  
Registration No. 33,373  
RADER, FISHMAN & GRAUER PLLC  
1533 N. Woodward Ave., Suite 140  
Bloomfield Hills, Michigan 48304  
(248) 594-0650

CERTIFICATE OF MAILING

I hereby certify that the enclosed Petition Under 37 CFR 1.181 is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, on this 10th day of July, 1998.

R0031500



# ATTACHMENT A

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part of #6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Burton

Serial No.: 08/657,725 ✓

Group No. 3301

Filing Date: 05/03/96

Examiner Carlson

For: Toy Clapper

Attorney Docket No.: 64741-002

Paper No. 3

**AMENDMENT UNDER 37 CFR 1.111**

Assistant Commissioner of Patents  
Washington, D.C. 20231

Sir:

In response to the Office Action mailed August 20, 1997 (Paper No. 2), please amend the above-identified application as follows:

**In The Specification**

Page 3, line 8, please delete "mylar" and insert therefor --polyester film, commonly known by its trademark Mylar®--; line 9, delete "mylar" and insert therefor --Mylar®--.

Page 4, line 4, delete "mylar" and insert therefor --Mylar®--; line 5, both occurrences, please cancel "mylar" and insert therefor --Mylar®--; line 7, both occurrences, please cancel "mylar" and insert therefor --Mylar®--; line 9, please delete "mylar" and insert therefor --Mylar®--; line 11, please delete "mylar" and insert therefor --Mylar®--; line 12, please delete "mylar" and insert therefor --Mylar®--; line 13, please delete "mylar" and insert therefor --Mylar®--.

**In The Claims**

Please cancel claim 2.

Please amend claims 1, 3, 5 and 9 as follows:

1. (First Amended) A toy, comprising:

an elongated central member having first and second ends and a longitudinal axis

a sliding collar capturing said central member and adapted to slide freely along said central member

a plurality of resilient rib elements each having first and second ends, wherein said first end of each resilient rib element is fixed to said central member and wherein said second end of each resilient rib element is fixed to said sliding collar, wherein each said resilient rib element urges said sliding collar away from said first end of each resilient rib element, and wherein each said resilient rib element is adapted to flex radially outwardly with respect to said longitudinal axis of said elongated central member,

a handle fastened to said elongated central member wherein said handle includes a surface which forms a stop element for limiting the sliding movement of said sliding collar.

3. (First Amended) The toy of claim 1, wherein said resilient rib elements are comprised of polyester film [mylar].

5. (First Amended) The toy of claim 1, wherein said elongated member includes an inner chamber wherein said inner chamber includes a plurality of rattling elements.

9. (First Amended) The toy of claim 1, wherein each said rib element is generally planar [planer].

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Please add new claim 11 as follows:

11. (New) A toy, comprising:

an elongated central member having first and second ends and a longitudinal axis

a sliding collar capturing said central member and adapted to slide freely along said central member

a plurality of resilient rib elements each having first and second ends, wherein said first end of each resilient rib element is fixed to said central member and wherein said second end of each resilient rib element is fixed to said sliding collar, wherein each said resilient rib element urges said sliding collar away from said first end of each resilient rib element, and wherein each said resilient rib element is adapted to flex radially outwardly with respect to said longitudinal axis of said elongated central member,

wherein each said resilient rib element includes a creased mid-portion.

#### REMARKS

Claim 2 has been cancelled, and claims 1, 3, 5 and 9 have been amended. New claim 11 has been added. Accordingly, claims 1 and 3-11 remain under prosecution in this application.

#### Mylar®

The Examiner has correctly pointed out that Mylar® is a trade name and was not so treated in the application as filed. Amendments have been made to correct the use of Mylar® in this application and to properly designate it as a registered trademark.

Claim 1 has been amended to include "a handle fastened to said elongated central member wherein said handle includes a surface which forms a stop element for

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limiting the sliding movement of said sliding collar.” The Examiner has not set forth any basis for combining the rhythm stick invention set out in Canadian Patent No. 640,801 with the novelty device of the ‘169 reference. Why is it obvious to combine these two references? Where is the motivation found within these two references to combine a musical instrument (rhythm stick) with a novelty device? Moreover, even if there is motivation to combine these two references, the handle 22 element of the present invention serves as the stop element for limiting the travel of collar 14. In the Canadian reference, knob 2 is equivalent to handle 22 of the present invention; however, knob 2 does not have any surface which functions as a stop element. Rather, annular clapper member 11 is fixed to stick 1 at a predetermined point 12 and functions as the stop element in the ‘801 Canadian reference. Incorporating the stop element into handle 22 is advantageous because it reduces material costs (a separate stop element is eliminated) and costs associated with material handling.

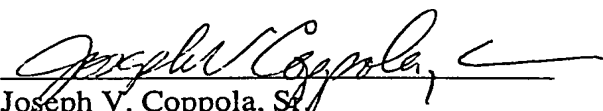
#### New Claim 11

New claim 11 incorporates the limitations set forth in originally submitted claim 1 and originally submitted claim 8. The Examiner admits that none of the references show a rib element having creased midportion but concludes that it is a mere choice of design providing only a fanciful decorative effect. The undersigned respectfully disagrees. One of the features of the present invention is the dynamics of the movement caused when handle 22 is oscillated. These dynamics are discussed on page 3, second full paragraph of the specification. The crease along the midsection of the ribs gives the plurality of resilient ribs a very distinctive look and dynamic response as handle 22 is rotated 32 and/or oscillated 24. This dynamic response forms an important aspect of the present invention and cuts to the heart of the visual effect presented during use.

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In view of the above arguments, the undersigned believes that claims 1 and 11, and their respective dependent claims are now in a condition for allowance.

Respectfully submitted,

  
Joseph V. Coppola, Sr.  
Registration No. 33,373  
RADER, FISHMAN & GRAUER PLLC  
1533 N. Woodward Ave., Suite 140  
Bloomfield Hills, Michigan 48304  
(248) 594-0650

CERTIFICATE OF MAILING

I hereby certify that the enclosed Amendment Under 37 CFR 1.111 is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, on this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

R0017179



# ATTACHMENT B



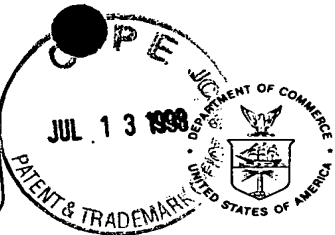
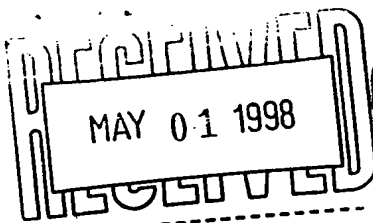
Serial No.: 08/657,725 Filed: 5/3/96 Attorney: JVC  
Applicant: Burton Docket No.: 64741-002 Date Mailed: 11/20/97  
Title: Toy Clapper ☒ First Class Mail ☐ Express Mail No. \_\_\_\_\_

The following was/were received in the U.S. Patent & Trademark Office Mail Room on the date stamped hereon:

- |     |                          |  |     |                                     |  |
|-----|--------------------------|--|-----|-------------------------------------|--|
| 1.  | <input type="checkbox"/> | Filing Form for New Application*<br>(in duplicate if charging deposit account).<br>____ Originating in the U.S.<br>____ National Phase under Chapter I<br>____ National Phase under Chapter II   | 12. | <input type="checkbox"/>            | Request for Corrected Filing Receipt   |
| 2.  | <input type="checkbox"/> | Filing Form for Continuing Application<br>(in duplicate if charging deposit account).<br>____ Rule 60 (37 CFR § 1.60) Appl'n*<br>____ FWC (37 CFR § 1.62) Application<br>____ Provisional Application<br>____ Divisional Application under: _____<br>____ 37 CFR § 1.53*<br>____ 37 CFR § 1.60*<br>____ 37 CFR § 1.62<br>____ Continuation-in-Part (CIP) under:<br>____ 37 CFR § 1.53*<br>____ 37 CFR § 1.62 | 13. | <input type="checkbox"/>            | Completion of Filing Requirements or<br>Response to Notice of Informal Application                         |
| 3.  | <input type="checkbox"/> | *Patent Application, including:<br>____ Pages Text (spec/clms/abst)<br>____ Claim(s)<br>____ Sheets of Drawings  | 14. | <input type="checkbox"/>            | Transmittal for Amendment (Response)   |
| 4.  | <input type="checkbox"/> | Declaration/Power of Attorney  | 15. | <input type="checkbox"/>            | Petition for _____ Mo. Extension of Time<br>(in duplicate if charging deposit account)                     |
| 5.  | <input type="checkbox"/> | Verified Stmt-Small Entity Status  | 16. | <input checked="" type="checkbox"/> | Amendment (Response)   |
| 6.  | <input type="checkbox"/> | Executed Power of Attorney   | 17. | <input type="checkbox"/>            | Preliminary Amendment (Response)   |
| 7.  | <input type="checkbox"/> | ____ Priority Document(s) & cover sheet  | 18. | <input type="checkbox"/>            | Response to Restriction Requirement or<br>Requirement for Election of Species                              |
| 8.  | <input type="checkbox"/> | ____ Assignment(s) & cover sheet   | 19. | <input type="checkbox"/>            | Information Disclosure Statement, with<br>Form(s) PTO-1449 (____ sheets) and<br>copies of _____ references |
| 9.  | <input type="checkbox"/> | Request to Approve Drawing Change,<br>with _____ Sheets of Red-Line Drawings   | 20. | <input type="checkbox"/>            | ____ Affidavit or _____ Declaration under<br>37 CFR _____ § 1.131 _____ § 1.132                            |
| 10. | <input type="checkbox"/> | ____ Sheets Formal Drwgs w/Cover Sheet   | 21. | <input type="checkbox"/>            | Notice of Appeal   |
| 11. | <input type="checkbox"/> | Request for Refund   | 22. | <input type="checkbox"/>            | Petition _____   |
|     |                          |  | 23. | <input type="checkbox"/>            | Letter _____   |
|     |                          |  | 24. | <input type="checkbox"/>            | Status Inquiry   |
|     |                          |  | 25. | <input type="checkbox"/>            | Issue Fee Transmittal  |
|     |                          |  | 26. | <input type="checkbox"/>            | Maintenance Fee Transmittal  |
|     |                          |  | 27. | <input type="checkbox"/>            | ____ Separate post card(s)   |
|     |                          |  | 28. | <input type="checkbox"/>            | Check No. _____ for \$ _____   |
|     |                          |  | 29. | <input type="checkbox"/>            | Covering Item No(s). _____   |
|     |                          |  |     |                                     | Other: _____   |
|     |                          |  |     |                                     | _____  |
|     |                          |  |     |                                     | _____  |
|     |                          |  |     |                                     | _____  |



## ATTACHMENT C



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

64741-002

APPLICATION NUMBER	05703728	FILING DATE	JUL 13 1998	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO. 002
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RADER FISHMAN & GRAUER  
SUITE 140  
1533 N WOODWARD AVENUE  
BLOOMFIELD HILLS MI 48304

QM11/0429

EXAMINER
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ART UNIT 2	PAPER NUMBER
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3712

5/29/98

DATE MAILED:

### NOTICE OF ABANDONMENT

This application is abandoned in view of:

☒ Applicant's failure to timely file a proper response to the Office letter mailed on 8/20/97.

☒ A response (with a Certificate of Mailing or Transmission of CM unsigned) was received on 11/24/97, which is after the expiration of the period for response (including a total extension of time of 0 month(s)) which expired on 11/20/97.

☐ A proposed response was received on \_\_\_\_\_, but it does not constitute a proper response to the final rejection.

(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC).

☐ No response has been received.

☐ Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

☐ The issue fee (with a Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_.

☐ The submitted issue fee of \$\_\_\_\_\_ is insufficient. The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_.

☐ The issue fee has not been received.

☐ Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of \_\_\_\_\_) were received on \_\_\_\_\_.

☐ The proposed new formal drawings filed \_\_\_\_\_ are not acceptable.

☐ No proposed new formal drawings have been received.

☐ The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on \_\_\_\_\_.

☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a) upon the filing of a continuing application.

☐ The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

☐ The reason(s) below:

*Robert A. Kuper*